

Sixth Appellate District

San Jose, California

MONDAY, NOVEMBER 14, 2005

The following case is submitted this date:
H026620 COUNTY OF SANTA CLARA v. VASQUEZ

H027446 PEOPLE v. REED

The judgment is affirmed. (not published)
(Elia, J.; We concur: Premo, Acting P.J., Bamattre-Manoukian, J.)
Filed November 14, 2005

H027004 PEOPLE v. MCDONOUGH

By the Court*:

Respondent's petition for rehearing is denied.
Filed: November 14, 2005
*Before Rushing, P.J., Premo, J. and Elia, J.

H028617 IN RE JESSE DURAN ON HABEAS CORPUS

The case is remanded to the trial court for modification of its order insofar as it precludes the Board's consideration of the crime itself. As modified, the court's order granting defendant's petition for habeas corpus and remanding the matter to the Board to conduct a new hearing and reconsider its decision in light of the views expressed herein, and in accordance with the requirements of due process, is affirmed. (not published)
(McAdams, J.; We concur: Rushing, P.J., Mihara, J.)
Filed November 14, 2005

H026049 PEOPLE v. CARRASCO

The judgment is affirmed. (not published)
(Elia, Acting P.J.; We concur: Bamattre-Manoukian, J., McAdams, J.)
Filed November 14, 2005

Sixth Appellate District

San Jose, California

Monday, November 14, 2005 (continued)

H028371 PEOPLE v. COOK

The judgment is reversed and the matter is remanded. The trial court is ordered to dismiss the prior serious felony conviction of second degree robbery (§ 1170.12, subd. (c)(1)), and impose a term of four years in state prison, concurrent with any other term defendant was serving, consistent with the original sentence dated May 25, 2000. The trial court shall order that the term of confinement is to begin from the date of the original sentence on May 25, 2000. The trial court is ordered to prepare a modified abstract of judgment to reflect the modifications stated above, and to forward the abstract to the Department of Corrections. (not published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed November 14, 2005

H028012 PEOPLE v. BRUTSCHE

The judgment is affirmed. (not published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed November 14, 2005

H027594 PEOPLE v. TAYLOR

The judgment is reversed. The matter is remanded for further proceedings consistent with this decision. (not published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed November 14, 2005

H027856 PEOPLE v. OLIVERAS

The order directing defendant to pay \$1,000.00 in attorney fees pursuant to section 987.8 is hereby stricken. The trial court is directed to prepare an amended abstract of judgment and forward a certified copy of the amended abstract to the Department of Corrections. As modified, the judgment is affirmed. (not published)

(Rushing, P.J.; We concur: Premo, J., Bamattre-Manoukian, J.)

Filed November 14, 2005

H025876 HARROD v. HARROD

By the Court*:

Appellant's petition for rehearing is denied.

Filed: November 14, 2005

*Before Bamattre-Manoukian, Acting P.J., Mihara, J. and McAdams, J.

Sixth Appellate District

San Jose, California

TUESDAY, NOVEMBER 15, 2005

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Elia, Acting P.J.; Bamattre-Manoukian, J.; Duffy, J.; and W. Magsaysay, Deputy Clerk.

H027687 PEOPLE v. JOHNSON

Cause called and argued by Martin Kassman appearing for Appellant and by Stan Helfman, Deputy Attorney General, appearing for Respondent. Cause ordered submitted. Duffy, J. leaves the bench and Premo, Acting P.J. joins the panel.

H027411 VALENTA v. FOSTER, as Trustee, etc.

H028005 VALENTA v. FOSTER, as Trustee, etc.

Cause called and argued by Matthew Matiasovich appearing for Appellant and by Robert A. Roth appearing for Respondent. Cause ordered submitted.

H026396 THE PEOPLE, ex rel. v. THOMPSON, et al.

Cause called and argued by Timothy D. Murphy appearing for Appellants and by Joel Franklin appearing for Respondent. Cause ordered submitted.

H028633 SINGHANIA, et al. v. SOFT PLUS, INC., et al.

Cause called and argued by John W. Clark appearing for Appellants and by Jeffrey S. Factor appearing for Respondents. Cause ordered submitted. The Court is in recess.

H027761 PEOPLE v. CARDENAS, JR.

The judgment is affirmed. (not published)
(Bamattre-Manoukian, Acting P.J.; We concur: Mihara, J., McAdams, J.)

Filed November 15, 2005

H028155 PEOPLE v. RAMOS

The judgment is affirmed. (not published)
(Bamattre-Manoukian, J.; We concur: Elia, Acting P.J., Duffy, J.)
Filed November 15, 2005

H028672 PEOPLE v. WILSON

The judgment is affirmed. (not published)
(Premo, J.; We concur: Rushing, P.J., Duffy, J.)
Filed November 15, 2005

Sixth Appellate District

San Jose, California

Tuesday, November 15, 2005 (continued)

H028255 IN RE JUSTIN S., A MINOR

By the Court:

Appellant's motion to vacate the submission order and request for oral argument is granted. The submission order dated October 20, 2005, is hereby vacated to allow the matter to be set for oral argument. Oral argument in the above entitled cause will be heard on Thursday, December 1, 2005, at 9:30 a.m., in the Courtroom, at 333 West Santa Clara Street, Suite 1060, San Jose, California. The matter will be resubmitted upon completion of oral argument.

Dated: November 15, 2005 Rushing, P.J.

H028153 RAMSAY HIGHLANDER, INC. v. FRESH EXPRESS, INC., et al.

By the Court:

The November 4, 2005 order submitting this case is hereby vacated to permit appellant the opportunity to file a motion to augment the record with an appealable judgment. If appellant files a motion to augment the record with an appealable judgment by November 30, 2005, the matter shall be resubmitted upon the granting of that motion. If appellant fails to file a motion to augment the record with an appealable judgment by November 30, 2005, the case shall be dismissed due to the absence of an appealable judgment.

Dated: November 15, 2005 Mihara, Acting P.J.

The Court reconvened at 1:30 p.m. in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California.
Present: Rushing, P.J.; Premo, J.; Bamattre-Manoukian, J.; and J. Michel, Deputy Clerk.

H027832 In re Marriage of TAUSHECK

Cause called and argued by Hugh T. Thompson appearing for Appellant and by Bernard N. Wolf appearing for Respondent. Cause ordered submitted.

H028344 LAW OFFICES OF SHAO, et al. v. CHANG

Cause called and argued by Andrew H. Wu appearing for Respondent and by Jon Viljoen appearing for Appellants. Cause ordered submitted.

H025703 LE FRANCOIS, et al v. DUET TECHNOLOGIES, INC., et al.

Cause called and argued by Phillip McCowan appearing for Appellants and by Jon B. Zimmerman appearing for Appellants. Cause ordered submitted.

Sixth Appellate District

San Jose, California

Tuesday, November 15, 2005 (continued)

Justice Manoukian leaves the bench and Justice Duffy takes the bench.

H028339 PEOPLE v. GALLEGOS

Cause called and argued by Danalynn Pritz appearing for Appellant and by Ronald E. Niver, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H028359 In re Marriage of CHANG & WANG

Cause called and argued by Chi-Hung Wang appearing for Appellant and by Bernard N. Wolf appearing for Respondent. Cause ordered submitted. Court stands in adjournment.

H029055 H029203 RODRIGUEZ v. HEWLETT PACKARD CO.

Appellant's motion to set aside the dismissal order filed October 19, 2005, in H029055 is granted. The dismissal order is vacated and the appeal is restored to active status.

It appearing that the Santa Clara County Superior Court is preparing a combined record on appeal in these matters, it is ordered that all documents filed under H029203 be stricken and refiled under H029055. All further proceedings on appeal will be conducted under H029055.

The Santa Clara County Superior Court is directed to forward the record on appeal to this court forthwith.

Dated November 15, 2005 RUSHING, P.J.

Sixth Appellate District

San Jose, California

WEDNESDAY, NOVEMBER 16, 2005

H025678 PEOPLE v. LAMMERS

We reverse the judgment for the limited purpose of resentencing. The trial court erred, insofar as it (1) imposed a two-year sentence enhancement under section 12022.1 based upon defendant's admission of said enhancement (without evidence that such admission was based upon a knowing and voluntary waiver of defendant's constitutional rights), (2) imposed concurrent sentences with respect to counts 6 through 8, 10 through 13, and 15 without staying such concurrent sentences pursuant to section 654, and (3) imposed a \$200 parole revocation restitution fine under section 1202.45 ex post facto.

We remand for resentencing (1) with respect to each of the 12 counts for which defendant was convicted, consistent with this opinion; and (2) for determination of the truth of the enhancement allegation under section 12022.1. After resentencing, the new judgment (in addition to the new sentence imposed on the 12 counts for which defendant was convicted and any enhancement properly imposed under section 12022.1), shall (a) omit any reference to a parole revocation restitution fine imposed under section 1202.45, stricken by this court, and (b) reflect the fact that the sentences as to counts 6 through 8, 10 through 13, and 15 running concurrent with the sentence imposed on counts 1 through 4, are stayed pursuant to section 654 as long as the judgment of conviction on counts 1 through 4 remains in full force and effect. (not published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed November 16, 2005

H028315 PEOPLE v. ROYBAL

The order awarding attorney fees of \$2,000.00 is stricken. As, modified, the judgment is affirmed. (not published)

(Duffy, J.; We concur: Rushing, P.J., Premo, J.)

Filed November 16, 2005

H028861 PEOPLE v. FREEMAN

The order denying defendant's petition for writ of error *coram nobis* is affirmed. (not published)

(Duffy, J.; We concur: Elia, Acting P.J., Bamattre-Manoukian, J.)

Filed November 16, 2005

Sixth Appellate District

San Jose, California

Wednesday, November 16, 2005 (continued)

The following cases are submitted this date:

H027023 PEOPLE v. HEARD
H028472 PEOPLE v. RANGER INSURANCE COMPANY
H028095 PEOPLE v. MERINO
H027972 PEOPLE v. BURGESS

THURSDAY, NOVEMBER 17, 2005

H027242 PEOPLE v. BEESON

By the Court:

Upon the court's own motion and to enable the court to review the entire court file in Superior Court no. F00388, People v. David Beeson, the submission order dated September 1, 2005, is hereby ordered vacated. The cause herein will be resubmitted on December 1, 2005.

Dated: November 17, 2005 Rushing, P.J.

H027687 PEOPLE v. JOHNSON

The judgment is reversed and the matter is remanded for a possible retrial on the allegation that defendant served a prior prison term due to his conviction in case No. 164981. If the prior allegation is found true, the trial court shall reinstate the judgment; if the allegation is not proved, the trial court shall resentence defendant accordingly. (not published)
(Bamattre-Manoukian, J.; We concur: Elia, Acting P.J., Duffy, J.)
Filed November 17, 2005

H028340 PEOPLE v. ALVARO H.

The challenged dispositional order is affirmed. (not published)
(McAdams, J.; We concur: Bamattre-Manoukian, Acting P.J., Mihara, J.)
Filed November 17, 2005

H028173 PEOPLE v. MAAS

(Filed order modifying opinion.) The petition for rehearing by appellant is denied. There is no change in the judgment. (not published)
(Duffy, J.; Premo, Acting P.J.; Elia, J.)
Filed November 17, 2005

Sixth Appellate District

San Jose, California

FRIDAY, NOVEMBER 18, 2005

H028884 PEOPLE v. CORONA

By the Court:

Upon the court's own motion, the submission order in the above-entitled matter dated November 4, 2005, is hereby vacated. The court by separate letter issued November 17, 2005, has requested supplemental briefing from the parties. The cause will be resubmitted upon completion of supplemental briefing.

Dated: November 18, 2005 Rushing, P.J.

H027832 MARRIAGE OF PATTY AND DAVE TAUSHECK

The judgment is affirmed. (not published)
(Bamattre-Manoukian, J.; We concur: Rushing, P.J., Premo, J.)
Filed November 18, 2005

H028657 PEOPLE v. LITMON, JR.

The order is affirmed. (not published)
(Elia, Acting P.J.; We concur: Bamattre-Manoukian, J., Duffy, J.)
Filed November 18, 2005

H027668 GARCIA v. GARCIA

The judgment is affirmed. Olivia shall bear costs for her appeal; Henry shall bear costs for his appeal. (not published)
(Elia, J.; We concur: Rushing, P.J., Premo, J.)
Filed November 18, 2005